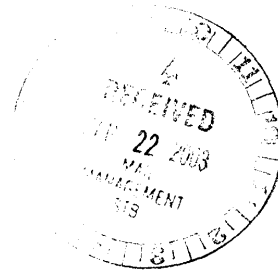


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THOMAS F. MCFARLAND

January 21, 2003



By UPS overnight mail

Vernon A. Williams, Secretary  
Surface Transportation Board  
Case Control Unit, Suite 713  
1925 K Street, N.W.  
Washington, DC 20423-0001

Re: Docket No. AB-6 (Sub-No. 399X), *The Burlington Northern and Santa Fe Railway Company -- Abandonment Exemption -- in Jefferson County, NE*

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Joint Reply To Response Of Burlington Northern and Santa Fe Railway Company To Opposition To Reinstatement Of Notice Of Exemption, for filing with the Board in the above referenced matter.

Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return in the self-addressed stamped envelope.

Very truly yours,

*Tom McFarland*

Thomas F. McFarland

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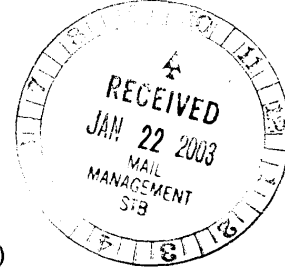
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Office of Proceedings

JAN 21 2003

Part of  
Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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THE BURLINGTON NORTHERN AND )  
SANTA FE RAILWAY COMPANY -- ) DOCKET NO.  
ABANDONMENT EXEMPTION -- IN ) AB-6 (SUB-NO. 399X)  
JEFFERSON COUNTY, NE )

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**JOINT REPLY TO RESPONSE OF BURLINGTON NORTHERN  
AND SANTA FE RAILWAY COMPANY TO OPPOSITION  
TO REINSTATEMENT OF NOTICE OF EXEMPTION**

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UNITED TRANSPORTATION UNION  
14600 Detroit Avenue  
Cleveland, OH 44107-4250

ENDICOTT CLAY PRODUCTS CO.  
P.O. Box 17  
Fairbury, NE 68352

Joint Petitioners

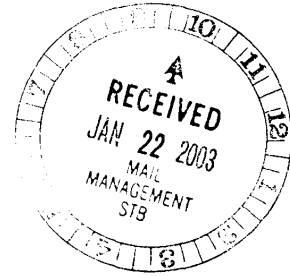
By: DANIEL R. ELLIOTT, III  
Associate General Counsel  
United Transportation Union  
14600 Detroit Avenue  
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By: THOMAS F. McFARLAND  
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Attorneys for Petitioners

DATE FILED: January 22, 2003

BEFORE THE  
SURFACE TRANSPORTATION BOARD



THE BURLINGTON NORTHERN AND )  
SANTA FE RAILWAY COMPANY -- ) DOCKET NO.  
ABANDONMENT EXEMPTION -- IN ) AB-6 (SUB-NO. 399X)  
JEFFERSON COUNTY, NE )

**JOINT REPLY TO RESPONSE OF BURLINGTON NORTHERN  
AND SANTA FE RAILWAY COMPANY TO OPPOSITION  
TO REINSTATEMENT OF NOTICE OF EXEMPTION**

Pursuant to 49 C.F.R. § 1117.1, UNITED TRANSPORTATION UNION (UTU) and  
ENDICOTT CLAY PRODUCTS CO. (Endicott Clay) hereby jointly reply to the Response filed  
by Burlington Northern and Santa Fe Railway Company (BNSF) on January 17, 2003 to  
Opposition to Reinstatement of Notice of Exemption previously filed by UTU and Endicott Clay.

**PROCEDURAL BACKGROUND**

On November 20, 2002, BNSF filed a notice of exemption under the class exemption for  
abandonment of out-of-service rail lines at 49 C.F.R. § 1152.50 for abandonment of a 10.8-mile  
rail line between Reynolds and Endicott, NE (Reynolds-Endicott line). The Reynolds-Endicott  
line is a segment of a contiguous 222-mile BNSF rail line across southern Nebraska between  
Table Rock, NE and Orleans, NE. The proposed abandonment would break the continuity of that  
rail line, resulting in two stub ends of rail line.

On December 19, 2002, UTU filed a motion for a stay of the notice of exemption on the  
ground that the Reynolds-Endicott line does not qualify for the class exemption because local  
traffic moved over the line during the 2-year period prior to the filing of the notice of exemption.

BNSF did not respond to UTU's motion.

In a decision served January 7, 2003, the Board through Office of Proceedings Director Konschnik dismissed the notice of exemption in view of BNSF's failure to have disputed UTU's contention regarding local traffic. It was provided in that decision that such dismissal would stand unless BNSF demonstrated, by January 17, 2003, that the line qualifies for the class exemption.

On January 14, 2003, Endicott Clay filed Opposition to Reinstatement of the Notice of Exemption on the ground that even if no local traffic originated or terminated on the line in the 2-year period, the notice of exemption should not be reinstated because there are substantial issues whether traffic that is moving overhead to the Reynolds-Endicott line, including Endicott Clay's traffic, can be rerouted efficiently and economically, and because the Board has determined that issues of that nature cannot be addressed adequately through class exemption procedure, citing *Consolidated R. Corp. -- Aband. of the Wierton Secondary Track in Harrison and Tuscarawas Counties, OH*, 1989 ICC LEXIS 136 at \*15-16 (ICC Docket No. AB-167 [Sub-No. 1088X], decided June 7, 1989).

United States Senator E. Benjamin Nelson of Nebraska, Nebraska State Senator Jeanne M. Combs, and the Nebraska Grain and Feed Association have filed requests with the Board for a six-month moratorium on abandonment of the line.

On January 17, 2003, BNSF filed a Response to the UTU and Endicott Clay opposition filings. BNSF alleged in that Response that no local traffic originated or terminated on the line during the 2-year period prior to the filing of the notice of exemption. BNSF also alleged that 88 percent of Endicott Clay's traffic in 2001 and 2002 was destined to eastern markets via Chicago,

routed west from Endicott to Superior, NE, thence south to Newton, KS, thence east to destinations via Chicago. BNSF stated that such traffic would be rerouted east from Endicott to Table Rock, NE, thence north to Lincoln, NE, thence east to destinations via Chicago. BNSF stated that the mileage via the proposed reroute would be 25 percent shorter than the mileage via the current route of movement. BNSF contended on that basis that the proposed reroute would be more efficient and economical for that traffic than the current route of movement.

#### **REPLY**

BNSF's Response does not provide justification for reinstatement of its notice of exemption for abandonment of the Reynolds-Endicott line. Contrary to BNSF's contention, the fact that the mileage would be shorter via proposed rerouting compared to the current route is not conclusive that the proposed rerouting would be efficient and economical. The Board's predecessor has found that mileage alone is not the sole criterion for judging relative efficiency of routes. *See, e.g., Pittsburgh & Lake Erie R. Co. v. ICC*, 796 F.2d 1534, 1542 (D.C. Cir. 1986) ("The Commission found that more circuitous routes could sometimes be more efficient . . .").

Much more detailed evidence on other factors affecting routing efficiency and economy would have to be considered before valid findings could be made on the subject. For example, UTU would present evidence that the BNSF terminal at Lincoln, NE is crowded and congested as a result of large number of coal trains using BNSF rail lines through Lincoln. It may be that congestion at Lincoln would reduce the efficiency of routing via that terminal compared to current routing.

In addition, UTU would show that the existing train crew serving Endicott Clay and other shippers east of Endicott has its terminal located at Wymore, NE, 28 miles east of Endicott and

39 miles west of Table Rock. If that crew were to operate west to pick up traffic at Endicott Clay or at other shippers located west of Wymore, and then were to transport that traffic east toward Table Rock pursuant to the rerouting proposed by BNSF, the crew would not be able to operate east of Wymore until the next day. That is because the collective bargaining agreement covering operations of that train crew would preclude that crew from "operating through its terminal" in a single day. That would add transit time to the transportation, and add operating costs for BNSF. These and other personnel-related factors affecting transportation would have to be considered before valid findings could be made regarding efficiency and economy of rerouting.

Moreover, BNSF's Response does not address other material considerations at all. The Response contains no explanation for BNSF's current transportation of Endicott Clay's eastbound traffic substantial distances west and south before turning east.<sup>1/</sup> Such an explanation is required in light of the availability of the Table Rock-Lincoln route for that traffic at present. The current westbound and southbound transportation of that traffic should be presumed to be more efficient and economical than the proposed direct eastbound transportation of that traffic unless and until BNSF provides a plausible explanation to the contrary. Otherwise, BNSF would have to explain why it is not transporting Endicott Clay's traffic in the most efficient and economical manner at present.

BNSF's Response is incomplete in other respects, too, because it does not address the efficiency and economy of rerouting the remainder of Endicott Clay's traffic that is not transported eastbound. Nor does the Response address the efficiency and economy of rerouting traffic for shippers in addition to Endicott Clay who would be affected by rerouting.

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<sup>1/</sup> Superior, NE is 56 miles west of Endicott, NE. Newton, KS is 216 miles south of Superior, NE.

All of the foregoing points up that exemption procedure (especially class exemption procedure) is wholly inadequate for addressing the efficiency and economy of rerouting of overhead traffic where, as here, substantial issues are raised in regard to that subject matter. Here, as in *Consolidated R. Corp. -- Aband. of the Wierton Secondary Track in Harrison and Tuscarawas Counties, OH, supra*, a formal abandonment application is required for a more extensive examination of the traffic rerouting issues raised by the proposed abandonment. What the ICC said in that case applies with equal force here, viz. (1998 ICC LEXIS 136 at \*15):

Substantial questions about Conrail's rerouting have been raised. Although mileage alone is not the sole criterion for judging inefficiency (citation omitted), and Conrail has offered some information to justify its routing from an operational standpoint, we are unprepared on this record to decide the question. More detailed evidence is required, especially in view of the State's expressed interest in a continuous Panhandle Line.

#### **CONCLUSION AND REQUESTED RELIEF**

WHEREFORE, the Board should find that reinstatement of the proposed notice of exemption has not been justified.

Respectfully submitted,

UNITED TRANSPORTATION UNION  
14600 Detroit Avenue  
Cleveland, OH 44107-4250

ENDICOTT CLAY PRODUCTS CO.  
P.O. Box 17  
Fairbury, NE 68352

#### **Joint Petitioners**

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(312) 236-0204

#### **Attorneys for Petitioners**

DATE FILED: January 22, 2003

**CERTIFICATE OF SERVICE**

I hereby certify that on January 21, 2003, I served the foregoing document, Joint Reply To Response Of Burlington Northern and Santa Fe Railway Company To Opposition To Reinstatement Of Notice Of Exemption, by UPS overnight mail on Michael A. Smith, Freeborn & Peters, 311 South Wacker Drive, Suite 3000, Chicago, IL 60606-6677.

*Thomas F. McFarland*

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Thomas F. McFarland